PROGRESS OF THE LAW.

As Marked by Decisions Selected from the Advance Reports.

BANKRUPTCY.

Exemptions

Exemptions in bankruptcy can only be allowed under the provisions of the various statutes of the states on the subject. So it is held that since, under the law of Pennsylvania, exemptions can be allowed to a debtor only from specific articles of personal property, including cash or valuable securities, a bankrupt, having elected to take a part of his exemption in personal property, was not entitled to take the balance from the proceeds of other property sold by his assignee for the benefit of creditors before bankruptcy proceedings were instituted: U. S. District Court (E. D. Pennsylvania) *In re Staunton,* 117 Fed. 507.

CARRIERS.

Negligence, Time of Claiming Damages

While it is admitted that a common carrier cannot stipulate against its own negligence, the Supreme Court of Kansas holds in *Atchison T. & S. F. Ry Co.* v. *Morris,* 70 Pac. 651, that it may, for a valuable consideration contract that, if damage results to the shipper by reason of its negligence, or the negligence of its agents, servants or employes, such shipper shall give notice of the damage within a reasonable time. The rule as to the validity of this stipulation in general has, of course, been well settled. This case shows that it is equally valid where the loss is due to negligence.

CHARITABLE BEQUEST.

Indefiniteness

Against the dissent of two judges the Court of Appeals of Kentucky holds in *Thompson's Ex'r* v. *Brown,* 70 S. W. 674, that a bequest of the proceeds of certain realty together with the residue of the testatrix's estate, to be collected by her executor, "and by him distributed to the poor in his discretion," is void for indefiniteness of beneficiaries. See *Moggridge* v. *Thackwell,* 7 Ves. 36.

DAMAGES.

The Supreme Court of Kansas holds in *Kansas City, etc., R. Co.* v. *Dalton,* 70 Pac. 645, that in an action for damages sustained by reason of the negligence of a railway company in carrying a passenger beyond her point of destination, thereby causing her expense, annoyance, inconvenience, loss of time, fright and mental suffering, no recovery can be had for the fright or mental suffering as an independent element of damages, unaccompanied by physical or bodily injury. Compare *Trigg* v. *Railroad Co.,* 74 Mo. 147.

Mental Suffering

EMPLOYES.

The Court of Chancery of New Jersey holds in *Jersey City Printing Co.* v. *Cassidy,* 53 Atl. 230, that the right of workmen to combine and to cease their employment in a body is as absolute as the right of an employer to discharge any number of men in his employment; and that union workmen have the right to strike on the employer's refusal to discharge non-union men in his employ. See an interesting example of a former view in New Jersey in *State* v. *Donaldson,* 32 N. J. Law, 151. The court in this case regards the views of that case as obsolete.

Right to Strike

EVIDENCE.

In a suit by a husband for a divorce he offered his own testimony of statements made to him by his wife in the presence of a third person, the plaintiff's mother. The Court of Appeals at St. Louis, Missouri, holds in *Reed* v. *Reed,* 70 S. W. 505, that the evidence was competent. The seal of confidence, it is said, does not rest on declarations shared by a third person. See also *Long* v. *Martin,* 152 Mo. 668.

Husband and Wife

LIMITATIONS.

The Supreme Court of Appeals of West Virginia decides in *Beecher* v. *Foster,* 42 S. E. 647, that implied trusts are within the statute of limitations, and the statute begins to run from the time the wrong was committed by which the person becomes chargeable as trustee by implication. Compare with this view the case of *Duckett* v. *Bank,* 86 Md. 400.

Implied Trusts

MUNICIPAL CORPORATIONS.

In *Watson* v. *Mayor, etc., of Thomson,* 42 S. E. 747, the Supreme Court of Georgia holds that a municipal corporation cannot, under the general welfare clause usually found in municipal charters, prohibit one from carrying on a lawful vocation on Christmas day, when there is nothing in the character of the business carried on which is calculated to interfere with the peace, good order and safety of the community. "An ordinance prohibiting one from following his avocation upon a given day can be sustained only as an exercise of the police power of the state. . . . A municipal corporation would doubtless have the right even to entirely prohibit on a given day the carrying on of a business, which though lawful, was of such a character that its prohibition for the time was absolutely essential to the welfare, in a legal sense, of the community."

Christmas Day

A pesthouse having been established within one mile of the city limits, contrary to statutory provisions, the disease of smallpox was contracted therefrom by a near-by family. Just as the member of the family was coming down, a friend visited them over night, and thereby contracted the disease. The Court of Appeals of Kentucky holds in *Henderson* v. *O'Haloran,* 70 S. W. 662, that the injuries thereby sustained by the visitor were the natural and proximate cause of the violation of the statute, and entitled the injured person to recover. Two judges dissent.

Pesthouse

NOTES.

In *Hackett* v. *First Nat. Bank of Louisville,* 70 S. W. 664, it is held by the Court of Appeals of Kentucky with one judge dissenting, that one who signs a note as surety, in which are written the words "five hundred" with spaces before and after them, which the maker fills up by writing "twenty" before and "fifty" after them, making a note for $2,550, is liable thereon to a bona fide purchaser. See *Brown* v. *Reed,* 79 Pa. 370. The decision differs from the Pennsylvania case and certain other of the decisions in holding the surety liable as a matter of law, and not making his liability depend on the question of negligence.

Alteration by Maker

NUISANCES.

In *Gilbrough* v. *West Side Amusement Co.*, 53 Atl. 289, the Court of Chancery of New Jersey holds that the noise caused by the shouts, cheers and stamping of feet of spectators at Sunday ball games, even though constituting a public nuisance which may be dealt with as such, will be enjoined at the suit of individuals living in the neighborhood; it being such as to appreciably disturb their rest and quiet. See also in connection with this upon the extent of the annoyance. *Walter* v. *Selfe*, 15 Jur. 416 at page 419.

Noises

POSTAL LAWS.

In *American School of Magnetic Healing* v. *McAnulty*, 23 S. C. Rep. 33, it is held by the Supreme Court of the United States that the postmaster-general is not justified in prohibiting the delivery of letters addressed to a corporation which assumes to heal disease through the influence of the mind, by the acts of Congress which authorize the retention of letters directed to any person obtaining money through the mails by false pretenses or promises, as the effectiveness of such treatment is a mere matter of opinion and the statutes are only intended to cover cases of actual fraud in fact. And further the decision of the postmaster-general that letters addressed to a certain corporation should be refused delivery is not so conclusive on the federal courts as to preclude them from granting injunctive relief to such corporation, where his action was not authorized by the statutes under which he assumed to act.

Fraudulent Schemes

PRINCIPAL AND SURETY.

In *Zane* v. *Citizens' Trust & Surety Co.*, 117 Fed. 814, the U. S. Circuit Court of Appeals (Third Circuit) holds that where a surety company was bound to indemnify against a contractor's failure to erect buildings, and took a bond from the defendant to secure such liability, the fact that the plaintiff company thereafter transferred its assets to another company, the latter assuming its liabilities, and borrowed money from the latter with which to complete the buildings on the contractor's default, did not preclude it from enforcing the defendant's liability on its bond.

Consolidation of Companies, Effect

RAPE.

In a prosecution for rape, evidence that prosecutrix made complaint must be restricted to the bare fact of complaint; and that prosecutrix at the time of the complaint stated that the defendant was her assailant, cannot be shown until the defendant has himself brought out the particulars, or introduced evidence to impeach the witness testifying to the complaint: *Oakley* v. *State,* 33 Southern, 23 (Supreme Court of Alabama).

Complaint, Details

REMOVAL OF CAUSES.

In Kentucky it is provided by law that no corporation created by any other state shall possess or operate any railway in this state until, by incorporation under the laws of this state the same shall become a "corporation, citizen and resident of this state." Any such corporation may, for such purpose, become a corporation, citizen and resident of this state by being incorporated, by filing with certain officials a copy of its charter or articles of incorporation. In view of this act the Court of Appeals of this state holds in *Davis' Adm'r* v. *Chesapeake & O. Ry. Co.,* 70 S. W. 857, that the members of a corporation which complied with the statute did not merely obtain a license or permission to do business in the state, but became a separate and distinct corporation, resident of the state, and could not remove a suit against it by a citizen to the federal courts. Three judges dissent, and the case in the majority and minority opinions presents an excellent review of the subject under consideration. The dissenting judges proceed principally upon the theory that the corporation was already doing business in the state and was compelled to comply with the Kentucky statute under penalties which amounted almost to confiscation.

Diverse Citizenship

RESULTING TRUSTS.

In *Solomon* v. *Solomon,* 92 N. W. 124, the Supreme Court of Nebraska holds that where one who pays the purchase price of land takes the title thereto in the name of a stranger, the law will, by implication, raise a resulting trust in favor of him who has paid for the land; but, where the one in whose name title is taken stands in the relation of wife to the purchaser, the presumption will be that the conveyance was intended as a gift to the wife. See *Kobarg* v. *Greeder,* 51 Neb. 365.

Presumptions

TELEGRAPH COMPANIES.

The Court of Civil Appeals of Texas holds in *Western Union Tel. Co.* v. *Cavin*, 70 S. W. 229, that where a telegraph company gave to an agent authority to contract for the transmission and delivery of telegrams, and the agent made a special contract for the immediate delivery of a particularly urgent telegram, receiving an additional fee therefor, the company could not afterwards be heard to say that its business was so conducted at the place of delivery as to render it impracticable to comply with such contract, the office there not being kept open for the delivery of messages at the time the telegram was received.

Delay in Delivery

By an error in the transmission of a telegraph message the sender was represented as quoting oranges at $1.60 per box, though the market price was $2.60 per box. The recipient closed with the $1.60 offer, though it knew the actual market price, and had reasonable grounds to believe that the message was erroneous, and acted in bad faith in ordering the goods. The sender furnished the goods to the recipient at the quoted price, and sued the telegraph company for the difference. On these facts the Supreme Court of California holds that the invalidity in the contract of sale was a defence to the telegraph company, and this although the defeat of the sender in an action against the recipient for the market price would not have precluded the telegraph company from still urging the defence: *German Fruit Co.* v. *Western Union Tel. Co.*, 70 Pac. 658.

Error in Message

TOWNS.

The Supreme Court of Mississippi holds in *Gulf & S. I. R. Co.* v. *Town of Seminary*, 32 Southern, 953, that a town cannot maintain a suit against a railroad for giving its name to a station near it, any cause of action for the inconvenience and confusion arising belonging to passengers and shippers. As to the rights of these latter the court says: "That these [*i. e.*, the inconveniences, etc., arising] are actionable grievances to the merchant and traveler injured thereby, we are strongly inclined to believe." The town is denied suit on the ground that it has suffered no legal injury.

Use of Name